



THE LAW SOCIETY
OF NEW SOUTH WALES

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23 February 2022

Data Economy Unit
Consumer Data Right Division
Treasury
Langton Crescent
PARKES ACT 2600

By email: el invoicing@treasury.gov.au

Dear Sir/Madam,

Supporting business adoption of electronic invoicing

The Law Society of NSW appreciates the opportunity to comment on the Treasury's consultation paper on "Supporting business adoption of electronic invoicing". The Law Society's Business Law and Privacy and Data Law Committees contributed to this submission.

General comments

We note that the Government is considering potential interventions to support and accelerate business eInvoicing adoption, in a phased manner, including any potential legislative frameworks. This builds on the Government's previous consultation on options for the mandatory adoption of electronic invoicing by businesses. While the Law Society stated in its earlier submission (attached), that we did not support mandatory eInvoicing, we supported the promotion of the benefits of Peppol eInvoicing to businesses.

We acknowledge that the drivers for the current actions to promote eInvoicing are efficiency and cost savings to support business recovery and reduce payment times. While Australia's approach to eInvoicing is not tax compliance driven, with the ATO's dual roles as the Australian Peppol Authority (APA) (and potentially the Business e-Invoicing Right Registrar) and in relation to national taxation, there may be concerns from some stakeholders about the implications for other tax processes and systems.

We suggest that it may improve the confidence of stakeholders with concerns around the short term and long-term access and use of the data exchanged through Peppol access points, if the Government could make clear that any data obtained through regulating the use of Peppol eInvoicing will only be used for that purpose.

Business eInvoicing Right

The Government is seeking stakeholder views on further options to support business eInvoicing adoption, including by introducing a Business eInvoicing Right (BER).

We consider the adoption of Option 2, (i.e. Commonwealth regulated entities) from the available options outlined, to be the preferable model for implementation of the BER. We suggest that once this model has been adopted, additional measures in the form of incentives to encourage other businesses to register, such as those used in Singapore, (paying incentives, such as Singapore's E-Invoicing Registration Grant and its Digital Resilience Bonus for businesses in the food services and retail sector)¹ would assist to facilitate the expansion of the BER, by consent, to other non-Commonwealth regulated entities.

While business accounting software providers are progressing delivery of integrated eInvoicing and payment capabilities within their accounting software, it would appear appropriate to lead implementation of eInvoicing through Commonwealth agencies and entities, and large corporations, at this stage. We also recognise that it may be necessary for the foreseeable future to recognise the necessity for alternative forms of payment for small traders, non-corporation businesses – particularly not-for-profits such as community groups and sports clubs.

If there is to be a BER register, and the ATO is to remain the APA, then there could be a case for including the BER in an existing Commonwealth-regulated register (such as the ASIC companies register etc.) to reduce the cost of compliance with registration requirements.

In developing threshold definitions for the phased adoption of the BER, we consider that the Government should, as far as possible, work with existing definitions of “small”, “medium” and “large” business in other Commonwealth legislation.

Further measures to support eInvoicing adoption

The Government should also consider the cyber and digital security requirements that will govern the Peppol platform. Given the business sensitivities around invoices, and other key financial and potentially personally identifiable information that will flow between the private sector and government, these issues should be the subject of discussion with the Office of the Information Commissioner. It will be important to ensure that collection, use and any disclosures of personal information are necessary and proportionate to the stated use case. A privacy impact assessment process, if not already undertaken, should be considered and addressed, and outcomes published (in whole or in part and subject to security as appropriate in the circumstances).

If you have any questions about this submission, please contact Liza Booth, Principal Policy Lawyer, at liza.booth@lawsociety.com.au or on (02) 9926 0202.

Yours sincerely,



Joanne van der Plaats
President

1. <https://www.imda.gov.sg/-/media/Imda/Files/About/Media-Releases/2020/Annex-D-Digital-Resilience-Bonus.pdf>